

Leonard J. McDonald (SBN 014228)
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17-03254

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

IN RE:

Martha Ann Gavroy

Debtor.

Nationstar Mortgage DBA Mr. Cooper

Plaintiff,

vs.

Martha Ann Gavroy

Defendant.

Chapter 13

Case No. 2:17-bk-10348-PS

Adversary No.

**COMPLAINT TO DETERMINE THE
VALIDITY, PRIORITY, OR EXTENT
OF A LIEN OR OTHER INTEREST IN
PROPERTY**

COMES NOW, Plaintiff Nationstar Mortgage DBA Mr. Cooper (“Lender”), by and
through counsel undersigned, complains and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Lender is a lending institution authorized to transact and conduct business in Arizona.
2. Defendant Martha Ann Gavroy (“Martha”) is an Arizona resident and filed the above captioned Chapter 13 bankruptcy case on August 31, 2017.

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- 1 3. This is an adversary proceeding to determine the validity, priority and extent of the
- 2 lien of Lender and is brought pursuant to 11 U.S.C. § 506 and Rule 7001(2) of the
- 3 Federal Rules of Bankruptcy Procedure.
- 4 4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
- 5 157 and 1334.
- 6 5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).
- 7

8 GENERAL ALLEGATIONS

- 9 6. This action concerns the real property commonly known as 8985 W Saint John Rd
- 10 Peoria, AZ 85382 (the “Property”) and legally described as:

11 LOT 32, TRAILS AT SURA Y A PARK, ACCORDING TO BOOK 467 OF
12 MAPS, PAGE 50 AND RE-PLATTED AS BOOK 744, OF MAPS, PAGE 23,
RECORDS OF MARICOPA COUNTY, ARIZONA.

- 13 7. On March 1, 2007, Martha A. Gavroy, an unmarried woman obtained title to the
- 14 Property by way of the Special Warranty Deed recorded on March 5, 2007 in the
- 15 Office of the Maricopa County Recorder at Instrument No. 2007-026622. A true and
- 16 correct copy of the Special Warranty Deed is attached hereto as **Exhibit A**.
- 17 8. On June 17, 2013, Martha obtained a loan from Nationstar Mortgage LLC in the
- 18 amount of \$161,800.00 (the “Loan”).
- 19 9. The Loan was secured by the Deed of Trust on the Property dated June 17, 2013 and
- 20 recorded on July 17, 2013 in the Office of the Maricopa County Recorder at
- 21 Instrument No. 2013-0648538 (the “DOT”). A true and correct copy of the DOT is
- 22 attached hereto as **Exhibit B**.
- 23 10. On August 22, 2014, the DOT was erroneously released by the Release and
- 24 Reconveyance of Deed of Trust (the “Release”) recorded on August 27, 2014 in the
- 25 Office of the Maricopa County Recorder at Instrument No. 2014-0568052. A true and
- 26 correct copy of the Release is attached hereto as **Exhibit C**.

1 11. On October 13, 2017, the DOT was assigned to Nationstar Mortgage LLC D/B/A Mr.
2 Cooper. The Corporate Assignment of Deed of Trust (the "Assignment") was
3 recorded on October 23, 2017 in the Office of the Maricopa County Recorder at
4 Instrument No. 2017-0782716. A true and correct copy of the Assignment is attached
5 here as **Exhibit D**.

6
7 **COUNT ONE**

8 **(Declaratory Judgment)**

- 9 12. Lender incorporates by reference all prior allegations and language in this
10 Complaint as though fully set forth herein.
- 11 13. There is a real and justifiable controversy between Lender and Martha that
12 entitles Lender to a declaratory judgment, declaring its rights and lien interest in
13 the Property.
- 14 14. The Release was executed and recorded erroneously by mistake.
- 15 15. Lender never intended to release the DOT.
- 16 16. Lender has a valid lien interest in the property.
- 17 17. The Loan has never been paid off by Martha or any other party.
- 18 18. Lender is entitled to the relief set forth in the prayer.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Lender prays for Judgment for it and against Martha as follows:

22 A. Declaring that the DOT may be rerecorded at the election of Lender effective as
23 of the original date of recording, July 17, 2013.

24 B. Declaring that Lender has a valid lien on the Property through the DOT as of the
25 original recording date, July 17, 2013.

26 //

1 C. Awarding Lender such other and further relief that the Court deems just and
2 proper.

3
4 RESPECTFULLY SUBMITTED this 28th day of March, 2019.

5  **TIFFANY & BOSCO**
6 P.A.

7 By: /s/ Leonard J. McDonald

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